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March 16, 2017

High Mountain Mining Company, LLC, a Wyoming limited liability company  
 c/o James R. Murray  
 3040 S. Vallejo Street  
 Englewood, Colorado 80110  
*Delivery via Certified Mail, return receipt requested (tracking # 9414 8102 0083 0499 4493 33)*

James R. Murray  
 3040 S. Vallejo Street  
 Englewood, Colorado 80110  
*Delivery via Certified Mail, return receipt requested (tracking # 9414 8102 0082 9339 7614 90)*

**Re: Sixty-day Notice of Intent to Sue**

To High Mountain Mining Company, LLC and James R. Murray:

This letter constitutes a "Notice of Intent to Sue" the High Mountain Mining Company, LLC (hereinafter the "Company") and/or James R. Murray related to the operation and maintenance of the Alma Placer and Leaching Plant (commonly referred to as the "Alma Placer Mine" or "Mine") in Park County, Colorado, along the Middle Fork of the South Platte River (hereinafter the "Middle Fork").<sup>1</sup> The Company violated the Federal Water Pollution Control Act (commonly referred to as the "Clean Water Act") by discharging pollutants into the Middle Fork without required permits and state certifications.

This Notice of Intent is being issued on behalf of Be the Change, Pamela Stone, Twyla Rusan, M. Jamie Morrow, and the South Park Coalition (collectively, the "Citizens"), pursuant to Clean Water Act §505, 33 U.S.C. §1365.

**I. Violations of Clean Water Act Standards, Limitations and Orders**

The Company is in violation of the Clean Water Act's effluent standards, limitations and orders by discharging sediments and/or pollutants into the Middle Fork without obtaining a national

<sup>1</sup> The Alma Placer Mine is located at or around 39° 17' 3" N/106° 3' 48" W Park County within Section 1 Township 9S, Range 78W, of the 6th. P.M. (Alma, Colorado).

pollutant discharge elimination system ("NPDES") permit, or state pollutant discharge elimination system ("SPDES"), or a certification that such discharges meet Colorado water quality standards, as required under 33 U.S.C. § 1341. The Company has violated the permitting requirements of Clean Water Act §402 (NPDES) and §404 (dredge and fill). The Company admits it did not have an NPDES or SPDES permit for at least one of the discharges described herein, and our research has disclosed that it has no NPDES, SPDES or §404 permit for the other discharges identified in this Notice. The Company's unpermitted discharges to navigable waters violate U.S.C. §§ 1311, 1342 and 1344.

## **II. Description of Violations**

There are at least four sources of unpermitted discharges: the intake pipe at the Alma Placer Mine; two pipes/culverts at or about the lower limits of the Alma Placer Mine, underneath Highway 9, approximately 0.3 – 0.5 miles downstream from the Pump House; and through the groundwater from the mine via the alluvium soil. From each of these four sources, the discharged materials moved and move from the mine and into the Middle Fork, which is a navigable water of the United States. The following addresses the discharges that have been affirmatively identified.

**2014 Discharge:** On or about October 3 through October 4, 2014, the Company discharged a pollutant into a water of the United States, to wit, a large plume of sediment, mud, mine waste, and other materials from the Alma Placer Mine into the Middle Fork.

The 2014 discharge from the Mine travelled downstream and left a fine-grained, white to yellow-brown, sedimentary precipitant in the Middle Fork. The pollutants discharged into the Middle Fork at that time (based on government sampling) include, but are not limited to: cadmium, iron, lead, arsenic, magnesium, aluminum, calcium, uranium, radon, zinc and manganese.

The Company has stated its belief that the discharge is related to a fresh water intake pipe at one of its settling ponds (Pond 4). The Citizens have determined that it is just as likely that the discharge occurred from Pond 4, travelled internally on Company property, and discharged through one of the two Culverts (discussed below) into the Middle Fork. If this is correct, then the mechanism of the 2014 discharge has yet to be properly identified, the settling ponds are inadequately contained, and there is a likelihood of recurrence.

While the Company has paid a fine to the Colorado Division of Reclamation Mining (DOR) and Safety, this agency does not enforce the Clean Water Act in Colorado and does not have authority to prosecute a state action under a State law comparable to section 1319 of the Clean Water Act. Moreover, the administrative penalty assessed by DOR is inadequate under Federal law, was assessed by an agency with goals that differ from the environmental agencies that enforce the Clean Water Act, and, given the significant and continuing injuries to public resources occasioned by the discharge was inadequate. Upon information and belief, neither the EPA nor the Colorado Department of Public Health and Environment have acted to enforce or address the violations occasioned by the 2014 discharge, nor other violations discussed in this Notice Letter.



Notably, the sediment that was discharged in 2014 is still present in the Middle Fork. No §404 (dredge and fill) permit has been obtained by the Company for this sediment.

**Ongoing Discharges:** Three additional sources of ongoing, unpermitted discharges exist: (1) a pipe/culvert located at or about the lower limits of the Alma Placer Mine just downgradient of the “terminal pond” on the Company’s property, which flows underneath Highway 9, approximately 0.3 – 0.5 miles downstream from the Pump House (“Culvert 1”), (2) a similar culvert (“Culvert 2”) located on the Company’s property approximately one-tenth of a mile upstream of Culvert 2 (together, the “Culvert Discharges”), and (3) ongoing leakage from the Company’s settling ponds into the groundwater beneath the ponds which then discharges into the Middle Fork (*See* map attached as Exhibit 1.)

The Culvert Discharges, and the groundwater discharges, represent sources of contamination that are ongoing and likely to continue absent modifications to the Alma Placer Mine. Indeed, there is a wetland area that ponds waters just north of the two Culverts on the Company property, which appears to detain pollutants before they flow through Culverts 1 and 2 and then discharge into the Middle Fork. Although more investigation will be undertaken, if necessary, it appears that one or more of the Company’s settling ponds, including the terminal pond, are unlined and are leaking pollutants into these wetland area just north of Culverts 1 and 2. It is especially likely that the terminal pond, being located directly uphill and upgradient of Culvert 2, is a major source of pollutants flowing through Culvert 2.

**Sampling of the Ongoing Discharge:** Sampling of the Culvert Discharges in the fall/winter of 2016 demonstrated pollutants present therein, specifically Aluminum, Magnesium, Manganese, Potassium, Sodium, Sulfur, Uranium, Iron, Lead, and Carbon. These contaminants include heavy metals, represent known Middle Fork mining district contaminants and appear to replicate contaminants present in at least one of the Company’s operational settling ponds.

There is a reasonable likelihood that the Culvert Discharges will continue. You have previously acknowledged that your company has not obtained, or applied for, a permit for such discharges. There is also a reasonable likelihood that the ongoing discharge of materials will cause lasting environmental degradation of the Middle Fork. Future injury to the river ecosystem and the watershed is likely to continue absent significant modifications to the Company’s property and operations.

The Company is responsible for continuing violations of the Clean Water Act which prohibits the discharge of pollutants in any amount without a permit.

### **III. Notice of Intent to Sue**

The Clean Water Act allows any person to bring a lawsuit in federal court against any person who is alleged to be in violation of an effluent standard or limitation. In actions under the Clean Water Act, federal courts have the authority to enforce the requirement that has been violated, enjoin activities and impose civil penalties of up to \$37,500 per day of violation.



Each day that an unlawful discharge occurs, including an unpermitted discharge, constitutes a separate violation of the Clean Water Act. The Company is responsible for the violations alleged in this letter. Employees and supervisors with oversight responsibilities over operations at the Alma Placer Mine are also responsible for any unlawful operations. The Clean Water Act violations are continuous or intermittent and commenced after the Clean Water Act's enactment in 1972.

The Clean Water Act requires that a notice of intent to sue be given to an alleged violator sixty days before the suit is filed. This letter constitutes our Notice of Intent to Sue the Company for its violations of the Clean Water Act. Notice of the alleged violation is also being provided to the U.S. Environmental Protection Agency ("EPA") and the EPA Regional Administrator; the Colorado Department of Public Health and Environment Water Quality Control Division; the Colorado Attorney General; and the Company's registered agent. 40 CFR 135.2. This notice covers all violations of the Clean Water Act known to counsel or its clients from public records and testing now available to us. Our lawsuit, when filed, will also address such other violations as may occur or become apparent after service of this notice letter.

#### **IV. Parties**

Counsel intends to sue on behalf of the below described and potentially other interested parties:

1. Pamela Stone (719-836-1828) is an individual living on the Middle Fork. Her address is 420 Front Street, Fairplay, Colorado 80440, which is riparian land on the Middle Fork. Ms. Stone is a taxpayer of the Town of Fairplay, Colorado.
2. Twyla Rusan (719-836-4565) is an individual living on or near the Middle Fork. Her address is 600 Silverwheels Cir., Fairplay, Colorado 80440. Ms. Rusan is a taxpayer of the Town of Fairplay, Colorado.
3. M. Jamie Morrow (240-475-0185) is an individual living on or near the Middle Fork. Her address is 654 Tristan Loop, Fairplay, Colorado 80440. Ms. Morrow is a taxpayer of the Town of Fairplay, Colorado.
4. The South Park Coalition, Inc. is a 501(c)(4) non-profit corporation made up of approximately 100 members, some of whom live in or around the Middle Fork. The South Park Coalition is an environmental, public interest and public trust advocacy organization working to enhance the natural resources of Park County, Colorado and the South Park Basin. All of its members are concerned about the water quality of the Middle Fork and the impact that impaired water quality and sediment discharges to the Middle Fork has had or may have on property values, recreational activities (including, hiking, fishing, picnicking, biking), and tourism, and aesthetic enjoyment of the Middle Fork. The phone number of the non-profit is 303-973-7774 and the address is 7140 S. Depew, Littleton, Colorado 80128.

5. Be the Change USA is a 501(c)(4) non-profit corporation, some of whose members and directors live in or around the South Platte River. Be the Change is an environmental, public interest and advocacy organization. Its members are concerned about the water quality of the Middle Fork and the impact that impaired water quality and sediment discharges to the Middle Fork has had or may have on property values, recreational activities (including, hiking, fishing, picnicking, biking), and tourism, and aesthetic enjoyment of the Middle Fork. The phone number of the non-profit is 720-320-8723 and the address is 1831 S. Welch Circle, Lakewood, Colorado 80228.

In summary, the Company's past and ongoing discharges are negatively impacting the individual Citizens, and the members of the Citizen organizations, and the public. Such impacts include the diminishment of the Citizens' aesthetic enjoyment of the Middle Fork, and their reduced use of the Middle Fork for fishing, wading, dog walking, picnicking, hiking and other recreational activities.

**Please be aware that each of these individuals and organizations are clients of the undersigned in this matter, and any attempts to contact them, or have agents or clients do so, would be a violation of Colorado ethics rules.**

If you wish to pursue discussions, or if you have any questions about the issues raised in this letter, please feel contact Randall Weiner at (303) 440-3321 or Kirstin Jahn at (303) 545-5128.

Very truly yours,



Randall M. Weiner, Esq.

Cc:

WyomingRegisteredAgent.com, Inc, Registered Agent  
High Mountain Mining Company, LLC  
3040 S. Vallejo Street  
Englewood, Colorado 80110

*Delivery (2 copies) via Certified Mail, return receipt requested (tracking #9414 8102 0088 3387 8755 85)*

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Deb Thomas, Acting Region 8 Administrator  
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Patrick Pfaltzgraff, Director  
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